

SUPREME JUDICIAL COURT  
COMMITTEE ON DELAY IN CHILD WELFARE CASES

***GUIDELINES FOR DEVELOPING  
PROPOSED FINDINGS OF FACT  
AND RULINGS OF LAW  
IN CHILD WELFARE CASES***

Fall 2001

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<sup>1</sup> Ms. Ferriter was a member of the Subcommittee on Rules and Procedures through February of 2001 while employed as the Case Manager and Child Welfare Coordinator for the Massachusetts Probate & Family Court.

## **GUIDELINES FOR DEVELOPING PROPOSED FINDINGS OF FACT AND RULINGS OF LAW IN CHILD WELFARE CASES**

Comprehensive and well written proposed findings of fact and rulings of law greatly assist in the just adjudication of petitions brought pursuant to G.L. c. 119, §§ 24 and 26, and G.L. c. 210, § 3 (colloquially known as “care and protection” and “termination of parental rights” cases, and collectively referred to in these guidelines as “child welfare cases”). The following guidelines and model outline have been developed and endorsed by the Supreme Judicial Court’s Committee on Delay in Child Welfare Cases. They are intended to assist trial counsel in child welfare cases in preparing proposed findings of fact and rulings of law.

### **General Guidelines**

1. In every contested child welfare case (unless the court otherwise instructs), the attorneys representing the parties at trial should submit comprehensive proposed findings of fact and rulings of law to the presiding judge under a timeline to be established by the court.
2. The parties’ proposed findings and rulings should be composed in short, numbered paragraphs grouped under subheadings such as those set forth in the Outline section below. Each paragraph should deal with only one set of related facts or one proposition of law.

### **Guidelines for Drafting Proposed Findings of Fact**

1. Within each topical area, the numbered paragraphs should follow an orderly progression. In the proposed findings of fact section, the information will usually be presented in chronological order. However, in some subsections it may be more appropriate to organize information according to a thematic design (*e.g.*, child by child).
2. Proposed findings of fact should be specific and detailed, particularly in the areas most central to the party’s theory of the case.
3. An attorney should propose only findings that are supported by the evidence or reasonable inferences therefrom. Every proposed fact should be followed by a reference to the supporting evidence or to any stipulated facts. There should be a cite to the trial exhibits or trial transcript whenever possible. If a transcript is not available sufficiently in advance of the due date of the proposed findings, then the attorney should identify the witness who testified to each fact and give the date of that testimony.
4. Where there is conflicting or disputed evidence concerning particular factual matters, it is advisable to include proposed credibility findings that articulate why certain testimony or evidence should be credited and conflicting evidence rejected.

## **Guidelines for Drafting Proposed Conclusions of Law**

1. In drafting proposed rulings of law, the attorney should articulate his or her theory of the case and set forth the legal analysis that supports the client's position, with citations to supporting legal authority, including pinpoint citations to the page of a case on which the relevant material appears.
2. Proposed rulings of law should be carefully tailored to the legal issues actually raised in the case and should apply the law to the particular facts of the case.
3. Well established propositions of law common to many child welfare cases should be stated succinctly, without significant elaboration, and should be followed by a citation to the leading case(s) on point. Avoid the use of string citations and boilerplate formulations of the general law in this area.

## **Model Outline of Proposed Findings of Fact**

Each topic area should be addressed unless it is plainly irrelevant to a particular case. It is recommended that either the proposed findings as a whole follow a logical, generally chronological order, or that the findings be divided into subsections by subject matter (e.g., findings concerning each parent or child where more than one parent or child is involved), with all of the findings contained within each subsection laid out in some logical (e.g., chronological) fashion.

### **I. Introductory Paragraph Concerning the Child(ren) and Parent(s)**

Identify the parties, including the child(ren) who are the subject of the proceedings, by name (including any alias) and date (and place, if known) of birth. Specify the child(ren)'s age(s) at the time of trial. Also identify other immediate family members who are not parties before the court. Describe the legal relationships among the members of the immediate family (e.g., specify if legal or putative parent, full or half-sibling). If paternity has been adjudicated, enter the date of adjudication or the date a voluntary acknowledgment of paternity was executed.

### **II. Procedural History of the Case**

Use the docket sheets to capture information regarding all significant procedural steps in this case and any related cases. Include, for example, the date the petition was filed; the names and dates of appointment of counsel and any court investigator or guardian ad litem; and the date(s) of trial. Specify the date and manner of service of process for each respondent. Set forth the substance of any preliminary court rulings, motions in limine, and significant evidentiary rulings. Lay out the procedural history of any past legal actions, including dates, courts, and docket numbers; findings of fact, if any; and prior determinations.

### **III. List of Exhibits and Witnesses**

List all exhibits, trial witnesses, and stipulated facts. Where applicable, specify whether exhibits were redacted or admitted for a limited purpose only. The witness list should identify each witness by name and by title (e.g., guardian ad litem) or relationship to the child (e.g., mother). For expert witnesses, provide licensure information (e.g., LICSW) or area of expertise (e.g., child psychiatrist).

#### **IV. The Facts of the Particular Case**

##### **A. History of the Period Prior to DSS Involvement**

1. If the child(ren) resided with the parent(s) prior to DSS involvement, specify the duration (giving dates); location, including a description of the surroundings; and amount of daily contact between parent(s) and child(ren).
2. Identify other relevant persons in the child(ren)'s life (especially the noncustodial parent, siblings and extended family) and describe the amount of contact and activities engaged in together. Incorporate evidence regarding the child(ren)'s development, including their health history (both physical and mental/emotional); educational history; and social adjustment.
3. Describe the parent(s)' circumstances, including their health history (both physical and mental/emotional); economic circumstances; employment history; and marital information (such as dates of marriage, separation, and divorce); and relationship with each other and with other partners or spouses, if relevant.

##### **B. History of the Family's Involvement with DSS Prior to Filing of the Petition**

Include details of evidence regarding the events immediately preceding the filing of the petition, including the dates and circumstances of any 51A reports and 51B investigations, voluntary agreements for custody, or parental surrenders.

##### **C. Evidence Regarding Reasonable Efforts, Services Offered, and Parental Utilization of Services**

Describe evidence of any services offered to the parent(s) and the child. State the evidence of the parent(s)' and DSS's compliance or lack of compliance with any service plan. Discuss any evidence of the parent(s)' course of treatment, if applicable, and of the prognosis for the parent's rehabilitation. Indicate if a court has determined that no reasonable efforts are required to reunite the child(ren) with their parent(s).

**D. Evidence Regarding Each Parent**

Set forth the relevant evidence regarding the ability, capacity, fitness, and readiness of the parent(s) to assume or resume parental responsibilities. Parties supporting the petition should, in particular, describe any evidence of the parent(s)' abuse or neglect of the child (specify by date, incident, and person making observation). Parties supporting the petition should pay particular attention to any evidence of an adverse impact on the child of any alleged unfitness of the parent(s). Parties opposing the petition should show why evidence of unfitness is incredible, insignificant, stale, or without negative impact on the child and should propose findings to show change, good parenting, a positive parent-child relationship, and the ability to provide a stable physical and emotional home environment.

**E. Evidence Regarding Each Child**

Describe the child(ren)'s behavior, as well as present emotional and physical health. Specify any educational, developmental, or intellectual challenges. Evidence of the child(ren)'s medical needs should also be set forth here. Include evidence concerning: (a) the parent(s)' ability to meet the child's special needs; (b) the effect on child(ren) of terminating or maintaining their relationship with their parent(s), foster or pre-adoptive parents, and/or siblings, relatives, or other significant persons; and (c) the wishes of the child(ren) regarding reunification, curtailment or continuation of contact with parent(s), and/or adoption, if appropriate.

**F. Evidence Regarding the Child's Substitute Care Placement History**

Provide dates and specify types of placement. Explain changes, if any, and the reasons therefor. If applicable, include information concerning any foster care review meetings and DSS permanency planning conferences, assuming evidence of such is introduced at trial. Parties should discuss any evidence of the child's behavior while in substitute care and/or evidence of any bonds formed with a substitute caretaker, whether the child will suffer harm if the placement is changed, and whether the child's parent has the capacity to meet the child's needs upon removal from substitute care.

**G. Evidence Regarding Visitation**

Include information concerning the dates, frequency, and location of visitation; any efforts by the parent(s) to obtain or increase visitation; parent(s)' and DSS's compliance or noncompliance with the visitation schedule; activities undertaken and person(s) present during visits; response of child(ren) before, during, and after visits. Also include information concerning any contacts between child(ren) and siblings or other relatives and

any nonvisitation contacts (e.g., telephone, letters, cards, school or medical-related contacts) between the child(ren) and the parent(s).

**H. Summary of Evidence Pertaining to the Fourteen Factors Set Forth in G.L. c. 210, § 3(c) (if applicable)**

**I. Evidence Regarding the DSS Plan for the Child(ren) and Any Alternative Plan(s) Offered by the Other Parties (if applicable)**

Summarize the evidence regarding DSS's efforts to implement a permanent plan for the child(ren) and/or any evidence supporting or opposing the feasibility of a plan other than that propounded by the petitioner. Summarize the evidence that demonstrates that DSS's plan or any other plan(s) proposed at trial is or is not in the best interest of the child. It is not enough to assert the conclusion that the plan serves the child's best interests. The attorney should propose a series of specific findings that discuss the various factors demonstrating the merit or lack of merit of the plan(s) in question. Also summarize any evidence concerning the timetable for implementation of the plan(s) and the nature and effect of any anticipated delay, change of schedule, or obstacles to implementation.

**J. Evidence Regarding the Advisability and/or Feasibility of Post-Adoption Contact**

Set forth evidence of any existing personal relationship between parent and child(ren) (or, if relevant, between child(ren) and siblings), or the degree of dissociation; evidence that demonstrates the significance of the existing bond, or lack thereof; and evidence, if any, showing that terminating the relationship would be harmful to the child or that continued contact is currently in the best interests of the child.

**V. Conclusions of Law**

In the proposed rulings of law section, threshold legal issues and procedural issues should be addressed first, followed by the core legal issues implicated in the case, and then any subsidiary legal issues. Where applicable, the so-called "fourteen factors" set forth in G.L. c. 210, § 3(c), should be dealt with in numerical order, with a brief statement noting the inapplicability of those factors not implicated in the case. This section should conclude with an identification of those factors that lead to the ultimate conclusion and the remedy sought.

**VI. Proposed Order**

State with specificity the relief your client seeks, including, if appropriate, an alternative form of relief. A draft Order should be included with your submission.

